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Security Council

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Letter dated 31 December 2012 from the Chair of the Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya addressed to the President of the Security Council

I have the honour to transmit herewith the report of the Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya (see annex), which covers the Committee's activities during the period from 1 January to 31 December 2012. The report is submitted in accordance with the note by the President of the Security Council of 29 March 1995 (S/1995/234).

(*Signed*) José Filipe **Moraes Cabral**
Chair

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Report of the Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya

I. Introduction

1. The present report of the Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya covers the period from 1 January to 31 December 2012.

2. During the reporting period, the Bureau consisted of José Filipe Moraes Cabral (Portugal) as Chair, with the delegation of India providing the Vice-Chair. In 2012, the Committee held seven informal consultations. The web page of the Committee is available at www.un.org/sc/committees/1970/.

II. Background information

A. Measures

3. By its resolution 1970 (2011), the Security Council imposed certain measures relating to Libya. These consisted of an arms embargo (covering arms and related materiel to and from Libya, as well as the provision of armed mercenary personnel to Libya), provisions relating to the inspection of cargo in the context of the enforcement of the arms embargo, and a travel ban and asset freeze on designated individuals and/or entities. Exemptions to the measures were also included. Resolution 1970 (2011) listed 16 individuals subject to the travel ban, of whom 6 were also subject to the asset freeze. A committee consisting of all the members of the Security Council was established to undertake the tasks set out in paragraph 24 of the resolution.

4. By its resolution 1973 (2011), the Security Council imposed additional measures relating to Libya, including the authorization to protect civilians and civilian populated areas under threat of attack in Libya; a no-fly zone in the airspace of Libya; a ban on flights of Libyan aircraft, with exemptions; and a ban on flights of any aircraft, with exemptions, if States had reasonable grounds to believe that the aircraft contained items the supply of which was prohibited under the arms embargo. The provisions relating to the inspection of cargo, in the context of enforcement of the arms embargo, were strengthened to authorize the use of all measures commensurate to the specific circumstances to carry out such inspections. The scope of the asset freeze was also expanded to include the exercise of vigilance when doing business with Libyan entities, if States had information that provided reasonable grounds to believe that such business could contribute to violence and the use of force against civilians. Resolution 1973 (2011) listed two additional individuals subject to the travel ban and five entities subject to the asset freeze. Of the 16 individuals who had previously been subject only to the travel ban, 7 were now also subject to the asset freeze.

5. On 24 June 2011, the Committee listed two additional individuals subject to the travel ban and asset freeze and one additional entity subject to the asset freeze.

6. By its resolution 2009 (2011), the Security Council introduced additional exceptions to the arms embargo and that two of the previously listed entities should

no longer be subject to the asset freeze and that the four remaining listed entities should be subject to a partially relaxed asset freeze. The Council also decided to lift the ban on flights of Libyan aircraft.

7. By its resolution 2016 (2011), the Security Council terminated the authorization related to the protection of civilians and the no-fly zone.

8. On 16 December 2011, pursuant to a request received from the relevant Libyan authorities, the Committee removed the names of two entities from its list of individuals and entities subject to the travel ban and/or asset freeze. By the end of the reporting period, therefore, 5 individuals were subject to the travel ban, 15 individuals were subject to both the travel ban and asset freeze, and two entities were subject to a partial asset freeze.

9. By its resolution 2040 (2012), in relation to inspections of cargo to enforce the arms embargo, the Security Council terminated the authorization granted to Member States to use all measures commensurate to the specific circumstances to carry out such inspections.

B. Designation criteria

10. In its resolution 1970 (2011), the Security Council decided that the travel ban and asset freeze should apply to the individuals and entities designated by the Committee: (a) involved or complicit in ordering, controlling or otherwise directing the commission of serious human rights abuses against persons in Libya, including by being involved or complicit in planning, commanding, ordering or conducting attacks, in violation of international law, including aerial bombardments, on civilian populations and facilities; or (b) acting for, on behalf of or at the direction of individuals or entities identified in subparagraph (a).

11. In its resolution 1973 (2011), the Security Council decided that the asset freeze should apply to all funds, other financial assets and economic resources of the Libyan authorities, as designated by the Committee, of individuals or entities acting on their behalf or at their direction or of entities owned or controlled by them, as designated by the Committee. In the same resolution, the Council decided that the travel ban and asset freeze should also apply to individuals and entities determined by the Council or the Committee to have violated the provisions of resolution 1970 (2011), particularly the arms embargo measure, or to have assisted others in doing so.

C. Mandate of the Committee

12. Pursuant to paragraph 24 of resolution 1970 (2011), the Committee was initially entrusted with undertaking the following tasks: to monitor the implementation of the arms embargo, travel ban and asset freeze; to designate individuals subject to the travel ban and to consider requests for exemptions; to designate individuals subject to the asset freeze and to consider requests for exemptions; to establish such guidelines as might be necessary to facilitate the implementation of the measures set out in the resolution; to report within 30 days to the Security Council on its work for the first report and thereafter to report as deemed necessary by the Committee; to encourage dialogue between the Committee

and interested Member States, in particular those in the region, including by inviting representatives of such States to meet with the Committee to discuss the implementation of the measures; to seek from all States whatever information it might consider useful regarding the actions taken by them to implement the measures effectively; and to examine and take appropriate action on information regarding alleged violations or non-compliance with the measures contained in the resolution.

13. By its resolution 1973 (2011), the Security Council broadened the scope of the mandate of the Committee to include the measures decided upon in the same resolution. The Council directed the Committee to designate Libyan authorities, individuals or entities acting on their behalf or at their direction or entities owned or controlled by them as subject to the asset freeze within 30 days of the adoption of the resolution and as appropriate thereafter.

14. In carrying out its mandate, the Committee is assisted by the Panel of Experts created by the Secretary-General pursuant to resolution 1973 (2011), in consultation with the Committee.[1]

15. In its resolution 2017 (2011), the Security Council requested the Committee, with assistance from its Panel of Experts, in cooperation with the Counter-Terrorism Committee Executive Directorate, working with other relevant United Nations bodies, including the International Civil Aviation Organization, and in consultation with international and regional organizations and entities, to assess the threats and challenges, in particular those related to terrorism, posed by the proliferation of all arms and related materiel of all types, in particular man-portable surface-to-air missiles, from Libya in the region. The Council also requested the Committee to submit a report to it on proposals to counter this threat and to prevent the proliferation of arms and related materiel, including measures to secure these arms and related materiel, ensure that stockpiles were managed safely and securely, strengthen border control and enhance transport security.

16. Subsequently, in its resolution 2022 (2011), the Security Council decided that the mandate of the United Nations Support Mission in Libya (UNSMIL) should include, in coordination and consultation with the Transitional Government of Libya, the task of assisting and supporting Libyan national efforts to address the threats posed by the proliferation of all arms and related materiel of all types, in particular man-portable surface-to-air missiles, taking into account, among other things, the report requested in paragraph 5 of resolution 2017 (2011).

17. Whereas in its resolution 1973 (2011) the Security Council authorized up to eight experts to serve on the Panel, the Council, in its resolution 2040 (2012) on the extension of the Panel's mandate for a second year, reduced the number of experts to a maximum of five. The tasks of the Panel, which works under the direction of the Committee, include the following: to gather, examine and analyse information from States, relevant United Nations bodies, regional organizations and other interested parties regarding the implementation of the measures decided in resolutions 1970 (2011), 1973 (2011) and 2009 (2011), in particular incidents of non-compliance; to make recommendations on actions that the Council, the Libyan

[1] See the letters from the Secretary-General to the President of the Security Council on the appointment of the members of the Panel of Experts (S/2011/293, S/2011/313, S/2011/377 and S/2012/240).

authorities or other States may consider to improve the implementation of the relevant measures; and to provide to the Council an interim report on its work no later than 90 days after the Panel's appointment (i.e., by 17 July 2012) and a final report to the Council no later than 30 days prior to the termination of its mandate with its findings and recommendations (i.e., by 14 February 2013).

18. In resolution 2040 (2012), the Security Council also encouraged the Panel, while mindful of the responsibility of UNSMIL to assist the Libyan authorities in countering the illicit proliferation of all arms and related materiel of all types, in particular man-portable surface-to-air missiles, and in securing and managing Libya's borders, to continue its investigations regarding sanctions non-compliance, including illicit transfers of arms and related materiel to and from Libya and assets of individuals subject to the asset freeze established by resolutions 1970 (2011) and 1973 (2011) and modified by resolution 2009 (2011), and encouraged UNSMIL and the Libyan authorities to support the Panel's investigatory work in Libya, including by sharing information, facilitating transit and granting access to weapons storage facilities, as appropriate.

III. Summary of the activities of the Committee

A. Report pursuant to paragraph 5 of resolution 2017 (2011)

19. On 23 March 2012, the Committee adopted the report concerning threats and challenges, in particular those related to terrorism, posed by the proliferation of all arms and related materiel of all types, in particular man-portable surface-to-air missiles, from Libya in the region and transmitted it to the Security Council (see S/2012/178).

B. Consolidated list of individuals and entities

20. On 13 February 2012, at the request of the relevant Libyan authorities, the Committee amended an entry in its list of individuals and entities designated as subject to the travel ban and/or asset freeze.

21. On 15 March 2012, the Committee updated an entry in its list. On 2 April 2012, the Committee updated several entries.

22. In a letter dated 17 July 2012, the Committee sought additional information from the Libyan authorities regarding a listed entity.

C. Implementation reports

23. In paragraph 25 of resolution 1970 (2011), the Security Council called upon all Member States to report to the Committee within 120 days of the adoption of the resolution (i.e., by 26 June 2011) on the steps they had taken with a view to the effective implementation of paragraphs 9, 10, 15 and 17 of the same resolution, which are related to the arms embargo, travel ban and asset freeze. To date, the Committee has received reports from 58 Member States (see annex). Unless a State requests that its report be kept confidential, the reports are issued as United Nations documents and posted on the Committee's web page.

D. Implementation assistance notices

24. During the reporting period, the Committee approved three implementation assistance notices, all of which were dispatched to all Member States and are available on the Committee's website.

25. On 7 March 2012, the Committee approved its first implementation assistance notice, noting that subsidiaries of the remaining listed entities were not subject to the asset freeze measure and that Member States were not obliged to keep frozen assets of entities owned or controlled either wholly or partially by those entities.

26. On 25 July 2012, the Committee approved its second implementation assistance notice, which contained information aimed at assisting Member States with the implementation of the arms embargo on Libya and was focused on some aspects of the exemptions contained in paragraphs 9 and 13, respectively, of Security Council resolutions 1970 (2011) and 2009 (2011). The notice outlined the information that should be included in arms embargo exemption notifications to the Committee.

27. On 9 October 2012, the Committee approved its third implementation assistance notice, which was aimed at assisting Member States with the implementation of the arms embargo and was focused on the reporting of detections of violations or attempted violations of the embargo to the Committee.

E. Notifications and requests for exemptions

1. Arms embargo

28. Paragraph 9 (a) of resolution 1970 (2011) provides for an exemption from the arms embargo for supplies to Libya of non-lethal military equipment intended solely for humanitarian or protective use and of related technical assistance or training, as approved in advance by the Committee. Paragraph 9 (c) provides for an exemption for other sales or supply of arms and related materiel or the provision of assistance or personnel to Libya, as approved in advance by the Committee. During the reporting period, the Committee approved 10 requests invoking paragraph 9 (a) and 3 requests invoking paragraph 9 (c).

29. Paragraph 13 (a) of resolution 2009 (2011) provides for an exemption from the arms embargo for supplies to Libya of arms and related materiel of all types, including technical assistance, training and financial and other assistance, intended solely for security or disarmament assistance to the Libyan authorities, upon advance notification to the Committee and in the absence of a negative decision by the Committee within five working days of such notification. Paragraph 13 (b) provides for an exemption for small arms, light weapons and related materiel temporarily exported to Libya for the sole use of United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, upon advance notification to the Committee and in the absence of a negative decision by the Committee within five working days of such notification. A total of 53 notifications invoking paragraph 13 (a), 2 notifications invoking paragraph 13 (b) and 9 notifications invoking paragraph 13 in general were received. No negative decision was taken by the Committee in any of the cases.

30. In a letter dated 25 July 2012, the Committee conveyed to the Libyan authorities a number of proposals aimed at streamlining and improving the exemption notification procedure.

2. Asset freeze

31. Paragraph 19 (a) of resolution 1970 (2011) provides for an exemption from the asset freeze for basic expenses, after notification by the relevant State to the Committee of the intention to authorize, where appropriate, access to such funds, other financial assets or economic resources and in the absence of a negative decision by the Committee within five working days of such notification. During the period under review, the Committee received nine notifications invoking paragraph 19 (a). No negative decision was taken by the Committee in any of the cases.

32. Paragraph 21 of resolution 1970 (2011) provides for an exemption from the asset freeze for the making of payments by a listed individual or entity that are due under a contract entered into prior to the listing of such a person or entity provided that the relevant States have determined that the payment is not directly or indirectly received by a listed person or entity, and after notification by the relevant States to the Committee of the intention to make or receive such payments or to authorize, where appropriate, the unfreezing of funds, other financial assets or economic resources for this purpose 10 working days prior to such authorization. During the reporting period, the Committee received three notifications invoking paragraph 21 of the resolution.

33. Paragraph 16 of resolution 2009 (2011) provides for an exemption from the asset freeze in relation to the four entities listed at the time, for the following purposes: (a) humanitarian needs; (b) fuel, electricity and water for strictly civilian uses; (c) resuming Libyan production and sale of hydrocarbons; (d) establishing, operating or strengthening the institutions of civilian Government and civilian public infrastructure; or (e) facilitating the resumption of banking sector operations, including to support or facilitate international trade with Libya.

34. The exemption applies provided that: the Member State has given notice to the Committee and in the absence of a negative decision by the Committee within five working days of such notification; the Member State has notified the Committee that the funds shall not be made available to or for the benefit of listed individuals; the Member State has consulted in advance with the Libyan authorities about the use of such funds; and the Member State has shared with the Libyan authorities the notification submitted pursuant to paragraph 16, and the Libyan authorities have not objected within five working days to the release of such funds. During the reporting period, the Committee received one notification invoking paragraph 16 of resolution 2009 (2011). No negative decision was taken by the Committee.

35. The notifications referred to above amount to at least $6 million unfrozen through the Committee in 2012.

F. Queries and requests for guidance

36. During the reporting period, the Committee responded to 14 queries or requests for guidance submitted by Member States related to the scope and application of the arms embargo or asset freeze measure.

G. Briefings and discussions in the Committee

37. In informal consultations on 9 February 2012, the members of the Committee discussed several requests for guidance or assistance received from Member States relating to the status of the subsidiaries of the two remaining listed entities, the Libyan Investment Authority and the Libyan Africa Investment Portfolio. They noted that entities owned or controlled, either wholly or partially, by those two entities were not subject to the asset freeze measure.

38. In informal consultations on 5 March 2012, the Panel of Experts presented its final report. The presentation was followed by a discussion among Committee members of the recommendations contained in the report.

39. In informal consultations on 9 April 2012, the members of the Committee agreed to invite the Special Representative of the Secretary-General and Head of UNSMIL to a meeting of the Committee in order to hold an exchange of views on five of the Panel's recommendations, as well as to discuss the working relationship between UNSMIL and the Panel. On the same day, pursuant to paragraph 18 of resolution 2009 (2011) and the fifteenth preambular paragraph of resolution 2040 (2012), the members of the Committee agreed to invite the Permanent Representative of Libya and relevant officials from the World Bank and the International Monetary Fund to a meeting of the Committee in order to be informed of the results of the assessment of the country's public financial management framework. Moreover, the nomination process for the Panel of Experts, which was to be reconstituted following the adoption of resolution 2040 (2012), was discussed.

40. In informal consultations on 9 May 2012, the members of the Committee held a fruitful exchange of views with the Special Representative.

41. In informal consultations on 25 July 2012, the Committee heard a presentation by the Panel of Experts on its interim report, which was followed by a discussion among Committee members of the recommendations contained in the report.

42. In informal consultations on 10 October 2012, at the request of one of its members, the Committee met and discussed the proliferation of arms from Libya in the region, in particular a media-reported case of alleged violation of the arms embargo involving a ship by the name of *Intisaar*. The Coordinator of the Panel of Experts also participated in the informal consultations by way of videoconference.

43. In informal consultations on 28 November 2012, the Chair took stock of the work carried out by the Committee since its establishment. Furthermore, the Committee discussed matters pending before it and a case of alleged proliferation of arms from Libya into the region.

44. In several of the aforementioned informal consultations, the Chair of the Committee distributed updated unofficial and informal tables reflecting all of the arms embargo and asset freeze exemption requests and notifications received by the Committee, as well as all of the requests for guidance received by the Committee, since its inception.

H. Letters of inquiry

45. On 23 May 2012, the Committee sent five letters concerning a case of alleged proliferation of arms from Libya in the region involving a ship by the name of *Letfallah II*, which was widely reported in the media. The Committee sent the letters to the reported State of origin, the State through which the ship had passed, the flag State of the vessel, the reported State of nationality of its owner and captain and the reported State of destination in whose territorial waters the ship had been intercepted and its cargo seized. By the end of the reporting period, the Committee or its Panel of Experts had received responses from four of the five States. Further inquiries are ongoing, and a follow-up letter has been sent to the reported State of origin.

46. On 25 October 2012, the Committee dispatched two letters concerning the case of alleged proliferation of arms from Libya in the region involving the *Intisaar*. The Committee sent the letters to the reported State of origin and to the State in which, reportedly, the ship had docked thereafter. Both States were requested to provide written details concerning the media reports within two weeks of the receipt of the letter. By the end of the reporting period, neither State had responded to the Committee.

47. On 18 December 2012, the Committee sent a letter concerning a case of alleged proliferation of arms from Libya in the region to a Member State that had previously referred to the case before the Security Council.

I. Consideration of reports and input submitted by the Panel of Experts

48. During the reporting period, the Panel of Experts submitted its final report (S/2012/163), dated 17 February 2012, to the Security Council and to the Committee, in accordance with resolution 1973 (2011), as well as an interim report dated 25 July to the Committee, in accordance with resolution 2040 (2012). In addition, the Panel submitted an inspection report dated 28 September.

49. In its final report, the Panel included 21 recommendations, of which 13 related to the arms embargo, 1 related to the travel ban, 6 related to the asset freeze and 1 related to the Committee's consolidated list of individuals and entities. In its interim report, the Panel included nine recommendations, of which four related to the arms embargo, four related to the asset freeze and one related to the Panel's access for conducting fieldwork. The inspection report contained a description of the cargo inspection undertaken by the Panel in relation to an attempted violation of the arms embargo.

50. The Panel of Experts provided the Committee with input on a draft response to a Member State that had requested the Committee's guidance on a particular matter.

51. In 10 instances, pursuant to requests for assistance received from the Panel of Experts in connection with eliciting a response from a Government to a request for information or a proposed Panel visit to a country, the Committee has written to the Permanent Mission of that country to the United Nations, seeking its help in expediting a response to the Panel and in facilitating a possible Panel visit to the country.

J. Periodic reports to the Security Council and open briefing by the Chair

52. Under the provisions of paragraph 24 (e) of resolution 1970 (2011), the Chair of the Committee delivered oral reports to the Security Council on the work of the Committee, in public meetings on 29 February, 10 May and 8 November 2012 (see S/PV.6728, S/PV.6768 and S/PV.6857). In accordance with section 12 (c) of the Committee's provisional guidelines, the Chair of the Committee held an open briefing on the work of the Committee on 30 November 2012.

IV. Violations and alleged violations of the sanctions regime

53. In its final report under resolution 1973 (2012), the Panel of Experts covered, among other things, cases of transfers of military materiel to and from Libya since the imposition of the arms embargo, cases of non-compliance with the travel ban and cases of non-compliance with the asset freeze. Under the first category, that is, the provision of military materiel to Libya, the Panel distinguished between three types of transfers, of which one was described as non-notified transfers, which constituted a violation of the arms embargo.

54. As noted in paragraphs 45 to 47 above, during the reporting period the Committee took action on three cases of alleged proliferation of arms from Libya into the region.

V. Observations

55. The Libya regime has likely been the most rapidly evolving Security Council sanctions regime in recent years. Within a span of 21 months, the Council adopted six resolutions, the first having resulted in the creation of the Committee and the rest having continued to have an impact on its approach and work. This reflects the responsiveness of the Council to the events on the ground. While initially the core objective of the measures was to prevent further attacks against the civilian population in Libya, subsequently, as modified, they have served to support the Libyan-led transition and rebuilding process and to benefit regional security.

56. The Committee stands ready to provide guidance on the scope and application of the measures to any Member State that so requests, in accordance with the provisions of relevant resolutions of the Security Council, in order to ensure a clear and consistent understanding on the part of all.

Annex

List of implementation reports received from Member States pursuant to paragraph 25 of resolution 1970 (2011)

Member States	*Document symbol*
Algeria	S/AC.52/2011/32
Andorra	S/AC.52/2011/4
Argentina	S/AC.52/2011/11 and Add.1 S/AC.52/2012/6
Armenia	S/AC.52/2011/39
Australia	S/AC.52/2011/54
Belarus	S/AC.52/2011/45
Belgium	S/AC.52/2011/40
Brazil	S/AC.52/2011/17
Brunei Darussalam	S/AC.52/2011/50
Bulgaria	S/AC.52/2011/2
Canada	S/AC.52/2011/52
China	S/AC.52/2011/27
Colombia	S/AC.52/2011/48
Cyprus	S/AC.52/2011/9
Czech Republic	S/AC.52/2011/46
Denmark	S/AC.52/2011/33
Egypt	S/AC.52/2011/29
Finland	S/AC.52/2012/3
France	S/AC.52/2011/42
Gabon	S/AC.52/2011/12
Georgia	S/AC.52/2011/30
Germany	S/AC.52/2011/28
Greece	S/AC.52/2011/18
Iraq	S/AC.52/2011/36
Italy	S/AC.52/2011/38

Member States	*Document symbol*
Japan	S/AC.52/2011/23
Latvia	S/AC.52/2011/41
Lebanon	S/AC.52/2011/49
Liechtenstein	S/AC.52/2011/14
Luxembourg	S/AC.52/2012/4
Malta	S/AC.52/2011/1
Malaysia	S/AC.52/2011/47
Mexico	S/AC.52/2011/44
New Zealand	S/AC.52/2011/19
Norway	S/AC.52/2012/1
Panama	S/AC.52/2011/13
Peru	S/AC.52/2012/2
Philippines	S/AC.52/2011/6
Poland	S/AC.52/2011/26
Portugal	S/AC.52/2011/16
Qatar	S/AC.52/2011/43
Republic of Korea	S/AC.52/2011/21
Republic of Moldova	S/AC.52/2011/25
Russian Federation	S/AC.52/2011/10 and Add.1 S/AC.52/2012/5
San Marino	S/AC.52/2011/35
Serbia	S/AC.52/2011/5
Singapore	S/AC.52/2011/24
Slovenia	S/AC.52/2011/34
Slovakia	S/AC.52/2011/8
South Africa	S/AC.52/2011/20
Sweden	S/AC.52/2011/31
Switzerland	S/AC.52/2011/15
Togo	S/AC.52/2011/51

Member States	*Document symbol*
Tunisia	S/AC.52/2011/53
Turkey	S/AC.52/2011/37
United Arab Emirates	S/AC.52/2011/3
United Kingdom of Great Britain and Northern Ireland	S/AC.52/2011/7
United States of America	S/AC.52/2011/22